

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

James Zarian,

Plaintiff,

v.

Richard Bukowski, in his
individual and representative
capacity as trustee of the Bukowski
Family Trust;
Carrie Bukowski, in her individual
and representative capacity as
trustee of the Bukowski Family
Trust;
Auto Sound, Inc., a California
Corporation; and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act

Plaintiff James Zarian complains of Defendants Richard Bukowski, in his individual and representative capacity as trustee of the Bukowski Family Trust; Carrie Bukowski, in her individual and representative capacity as trustee of the Bukowski Family Trust; Auto Sound, Inc., a California Corporation; and Does 1-10 ("Defendants") and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from muscular dystrophy, cannot walk and uses a wheelchair for mobility.

2. Defendants Richard Bukowski and Carrie Bukowski, in individual and representative capacity as trustees, owned the real property located at or about 18042 Beach Blvd., Huntington Beach, California, in December 2016.

3. Defendants Richard Bukowski and Carrie Bukowski, in individual and representative capacity as trustees, own the real property located at or about 18042 Beach Blvd., Huntington Beach, California, currently.

4. Defendant Auto Sound, Inc. owned the Beach Auto Sound store located at or about 18042 Beach Blvd., Huntington Beach, California, in December 2016.

5. Defendant Auto Sound, Inc. owns the Beach Auto Sound store ("Store") located at or about 18042 Beach Blvd., Huntington Beach, California, currently.

6. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

JURISDICTION & VENUE:

7. This Court has subject matter jurisdiction over this action pursuant to

1 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
2 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 8. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10
11 **FACTUAL ALLEGATIONS:**

12 10. The Plaintiff went to the Store in December 2016 to shop for a sound
13 system.

14 11. The Store is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 12. Parking spaces are one of the facilities, privileges and advantages
17 offered by Defendants to patrons of the Store.

18 13. Unfortunately, there was not a single compliant, accessible parking
19 space in the parking lot for use by persons with disabilities that complied with
20 the Americans with Disability Act Accessibility Guidelines (ADAAG) in
21 December 2016.

22 14. There is currently no compliant, accessible parking space that complies
23 with the ADAAG today.

24 15. Plaintiff alleges, on information and belief, defendants used to have an
25 accessible parking space but it was allowed to fade or get paved over.

26 16. The defendants had no policy or procedure in place to maintain its
27 parking spaces so that they remained compliant and useable for persons with
28 disabilities in December 2016.

1 17. The defendants have no policy or procedure in place to maintain its
2 parking spaces so that they remain compliant and useable for persons with
3 disabilities currently.

4 18. This barrier was encountered by plaintiff and caused Plaintiff difficulty
5 and frustration.

6 19. Meanwhile, and even though plaintiff did not personally confront the
7 barrier, the transaction counter at the Store was 40 inches in height.

8 20. There was no lowered, 36-inch or lower portion of the transaction
9 counter at the Store for use by persons with disabilities during plaintiff's visit.

10 21. Plaintiff would like to return and patronize the Store but will be deterred
11 from visiting until the defendants cure the violations.

12 22. The violations identified above are easily removed without much
13 difficulty or expense. They are the types of barriers identified by the
14 Department of Justice as presumably readily achievable to remove and, in fact,
15 these barriers are readily achievable to remove. Moreover, there are numerous
16 alternative accommodations that could be made to provide a greater level of
17 access if complete removal were not achievable.

18 23. Additionally, on information and belief, the plaintiff alleges that the
19 failure to remove these barriers was intentional because: (1) these particular
20 barriers are intuitive and obvious; (2) the defendants exercised control and
21 dominion over the conditions at this location and, therefore, the lack of
22 accessible facilities was not an "accident" because, had the defendants
23 intended any other configuration, they had the means and ability to make the
24 change.

25 24. Given the obvious and blatant violation, the plaintiff alleges, on
26 information and belief, that there are other violations and barriers on the site
27 that relate to his disability. Plaintiff will amend the Complaint to provide
28 proper notice regarding the scope of this lawsuit once he conducts a site

1 inspection. However, please be on notice that the plaintiff seeks to have all
 2 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
 3 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
 4 he can sue to have all barriers that relate to his disability removed regardless of
 5 whether he personally encountered them).

6 25. Plaintiff is and has been deterred from returning and patronizing the
 7 Store because of his knowledge of the illegal barriers that exist. Plaintiff will,
 8 nonetheless, return to the business to assess ongoing compliance with the
 9 ADA and will return to patronize the Store as a customer once the barriers are
 10 removed.

11
 12 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 13 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
 14 defendants (42 U.S.C. section 12101, et seq.)

15 26. Plaintiff repleads and incorporates by reference, as if fully set forth
 16 again herein, the allegations contained in all prior paragraphs of this
 17 complaint.

18 27. Under the ADA, it is an act of discrimination to fail to ensure that the
 19 privileges, advantages, accommodations, facilities, goods and services of any
 20 place of public accommodation is offered on a full and equal basis by anyone
 21 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 22 § 12182(a). Discrimination is defined, inter alia, as follows:

- 23 a. A failure to make reasonable modifications in policies, practices,
 24 or procedures, when such modifications are necessary to afford
 25 goods, services, facilities, privileges, advantages, or
 26 accommodations to individuals with disabilities, unless the
 27 accommodation would work a fundamental alteration of those
 28 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

- b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADAAG, found at 28 C.F.R., Part 36, Appendix “D.”
- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

28. Pursuant to 28 C.F.R., Part 36, Appendix D (herein after “1991 Standards”), section 4.1.2, and 36 C.F.R., Part 1191, Appendix B (herein after “2010 Standards”), section 208.2, if a business provides between 1 and 25 parking spaces, they must provide at least one handicap parking space that is van accessible (having an eight foot access aisle).

29. Here, the defendants did not provide a single compliant, useable accessible parking space in its parking lot.

30. In areas used for transactions where counters have cash registers and are provided for sales or distribution of goods or services to the public, at least one of each type shall have a portion of the counter which is at least 36 inches in length with a maximum height of 36 inches above the floor. 1991 Standards § 7.2(1). Under the 2010 Standards, where the approach to the sales or service counter is a parallel approach, such as in this case, there must be a portion of the sales counter that is no higher than 36 inches above the floor and 36 inches in width and must extend the same depth as the rest of the sales or service counter top. 2010 Standards § 904.4 & 904.4.1.

1 31. Here, no such accessible cashier counter or a lowered, 36 inch counter
2 has been provided in violation of the ADA.

3 32. A public accommodation must maintain in operable working condition
4 those features of its facilities and equipment that are required to be readily
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6 33. Here, the failure to ensure that the accessible facilities were available
7 and ready to be used by the plaintiff is a violation of the law.

8 34. Given its location and options, plaintiff will continue to desire to
9 patronize the Store but he has been and will continue to be discriminated
10 against due to the lack of accessible facilities and, therefore, seeks injunctive
11 relief to remove the barriers.

12
13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
14 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
15 51-53)

16 35. Plaintiff repleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 36. Because the defendants violated the plaintiffs' rights under the ADA,
20 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
21 Code § 51(f), 52(a).)

22 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
23 discomfort or embarrassment for the plaintiffs, the defendants are also each
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
25 (c).)

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 Plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act which damages provide for
9 actual damages and a statutory minimum of \$4,000.

10 3. Reasonable attorney fees, litigation expenses and costs of suit,
11 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

12
13 Dated: January 11, 2017

CENTER FOR DISABILITY ACCESS

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15 By: 
16 Russell Handy, Esq.
17 Attorneys for plaintiff
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